



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF A-A-A-

DATE: OCT. 22, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a computer engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner contends that he is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.<sup>1</sup> *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>2</sup>

## II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.<sup>3</sup> The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we find that the Petitioner has not sufficiently identified or provided consistent information and evidence regarding his proposed endeavor, nor demonstrated its national importance.

In part 6 of the Form I-140, under "Basic Information About the Proposed Employment," the Petitioner identified his "Job Title" as "Computer Engineer" and indicated that he will "[d]evelop, create, and modify general computer application software for specialized utility programs" as well as "[a]nalyze user needs and develop software." Furthermore, in a letter accompanying his Form I-140, the Petitioner asserted that he "is a valuable researcher in the field of cyber technology, who would be an asset to the United States."<sup>4</sup>

The Director issued a request for evidence (RFE) advising the Petitioner of the *Dhanasar* framework. The RFE in part asked the Petitioner to provide "a detailed description of the proposed endeavor and why it is of national importance," including supporting evidence demonstrating "the endeavor's potential prospective impact."

In response to the Director's RFE, the Petitioner contended that he "seeks to continue to research and work on cyber security." He pointed to the growing number of data breaches since 2005 and references his unpublished paper, entitled [REDACTED]

<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>3</sup> The Petitioner presented an academic credentials evaluation indicating that his degree from [REDACTED] (1995) is the foreign equivalent of "a Master of Science degree in Electrical Engineering from an accredited university in the United States." See 8 C.F.R. § 204.5(k)(3)(i)(A). In addition, the Petitioner received a Master of Business Administration degree from [REDACTED] in 2012.

<sup>4</sup> The Petitioner submitted ETA Form 9089, Application for Permanent Employment Certification, listing his work experience since May 1995. This form does not identify any jobs for the Petitioner after March 2009. In addition, the record includes his Form G-325A, Biographic Information, indicating that he has been "unemployed" since July 2011. As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, USCIS will consider information about his current and prospective positions to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the first prong of the *Dhanasar* framework.

██████████ that identifies six approaches utilized by cybercriminals. With respect to his “plan for future activities,” the Petitioner stated that his “plan involves operating a non-profit organization to carry out his activities.” He further explained that he has “registered a non-profit in the State of Texas known as ██████████ with his spouse and brother on the Board.”<sup>5</sup> The Petitioner did not elaborate on the activities he will pursue while operating this non-profit organization or explain how they relate to his proposed endeavor.

In addition, the Petitioner’s response included a September 2017 letter from ██████████ an information security engineering supervisor with ██████████ as a “consultant through RMS,” stating that he and the Beneficiary were “part of a global network engineering team that was responsible for designing and supporting the infrastructure operations at ██████████ recently.”<sup>6</sup> The Petitioner, however, did not indicate what, if any, future research or cyber security projects he will undertake on behalf of ██████████ or ██████████

The Director denied the petition, finding that while the Petitioner’s proposed cyber security work had intrinsic merit, he did not establish its “national or global implications within the field of cyber security.” In addition, the Director concluded that the Petitioner had not shown “that his work would impact the cyber security industry more broadly, as opposed to being limited to the clients he serves.”

In the appeal brief, the Petitioner does not address or further explain the proposed endeavor he plans to undertake and its prospective impact, but instead focuses on his past work “designing and supporting infrastructure operations at ██████████” We further note that throughout these proceedings, the Petitioner has offered several potentially conflicting descriptions of his proposed endeavor. For example, the Petitioner has proposed to work as a computer engineer developing software, a researcher in the field of cyber technology, an operator of a non-profit organization, and a private sector cybersecurity service provider. He has not resolved the inconsistencies relating to his proposed endeavor with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The record does not include sufficiently detailed or consistent information, or supporting documentation, to establish whether the Petitioner intends to pursue cyber security research as his future endeavor. Nor has he identified the specific research projects he would undertake or the capacity in which he proposes to conduct such research. Furthermore, the Petitioner has not demonstrated that his prospective work as a researcher, cybersecurity service provider, or operator of a non-profit organization otherwise stands to have broader implications rising to the level of having national importance. In *Dhanasar*, we held that a petitioner must identify “the specific endeavor that the foreign national proposes to undertake.” *Id.* at 889. The record does not sufficiently explain the

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<sup>5</sup> The record includes a “Certificate of Filing” and a “Certificate of Formation, Nonprofit Corporation” from the State of Texas dated March 2013.

<sup>6</sup> ██████████ letter was accompanied by his resume which reflects that he last worked for ██████████ in September 2014 as a “consultant through ██████████

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Petitioner's proposed endeavor(s) such that we are able to determine, without additional information and evidence, that his work will have national importance and that he is well positioned to advance his proposed endeavor. Furthermore, the Petitioner has not established that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

### III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.

Cite as *Matter of A-A-A-*, ID# 1704184 (AAO Oct. 22, 2018)